UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION


JAMES BROWN EDWARDS, JR.,                              Case No. 4:06-CV-149

        Plaintiff,                                  Hon. Richard Alan Enslen

v.

M. TOWNSEL-MUNDAY,

        Defendant.

_____/

## ORDER

This matter is before the Court on Plaintiff's Motion for Summary Judgment.  In his Complaint, Plaintiff asserts that Defendant improperly moved him from a tobacco-free housing unit to a "smoking unit" in violation of the Eighth Amendment.  Plaintiff now moves for summary judgment. In support thereof, Plaintiff relies entirely on the allegations in his Complaint and the attachments thereto.  To prevail on a motion for summary judgment, Plaintiff must demonstrate through the submission of *evidence* that there exist no genuine disputes of material fact and, furthermore, that he is entitled to prevail as a matter of law.  Fed. R. Civ. P. 56.

The allegations asserted in Plaintiff's Complaint do not constitute evidence.  Moreover, the only evidence Plaintiff submitted with his Complaint (or motion for summary judgment) is: (1) a document indicating that on September 14, 2005, Plaintiff's request to be placed in "tobacco-free housing" was granted; (2) a copy of a grievance Plaintiff filed on September 6, 2006, apparently regarding Plaintiff's subsequent removal from tobacco-free housing; and (3) a major misconduct report indicating that Plaintiff was found guilty of disobeying a direct order on September 13, 2006.

While the Court recognizes that exposure to environmental tobacco smoke *can* constitute

a violation of the Eighth Amendment under certain circumstances, *see, e.g., Talal v. White*, 403 F.3d 423

(6th Cir. 2005), the evidence thus far submitted by Plaintiff fails to establish that there exist no genuine

disputes of material fact or that Plaintiff is entitled to prevail as a matter of law.  Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's Motion for Summary Judgment (Dkt. No.

11) is **DENIED**.


                                                         /s/ Richard Alan Enslen
DATED in Kalamazoo, MI:                                  RICHARD ALAN ENSLEN
April 9, 2007                                            SENIOR UNITED STATES DISTRICT JUDGE